



4191-02U

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 498

[Docket No. SSA-2016-0009]

RIN 0960-AH99

Penalty Inflation Adjustments for Civil Money Penalties

AGENCY: Social Security Administration.

ACTION: Interim Final Rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and further amended by the Bipartisan Budget Act of 2015, section 701: Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, this interim final rule incorporates the penalty inflation adjustments for the civil money penalties contained in the Social Security Act.

DATES: This interim final rule is effective on August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Joseph E. Gangloff, Chief Counsel to the Inspector General, Room 3-ME-1, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-4440, both directly and for IPTTY. For information on eligibility or filing for benefits, call the Social Security Administration's national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit the Social Security Administration's Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

The Social Security Administration (SSA) was established as an independent agency, effective March 31, 1995, under Public Law 103-296, the Social Security Independence and Program Improvements Act of 1994 (SSIIPIA). The SSIIPIA also created an independent Office of the Inspector General (OIG) to which the Commissioner of Social Security (Commissioner) delegated certain authority for civil monetary penalty (CMP) cases on June 28, 1995.

On November 27, 1995, the OIG published a final rule at 60 FR 58225 establishing a new Part 498 in Title 20 of the Code of Federal Regulations. This Part serves as a repository for SSA's existing CMP regulations, which implemented section 1140 of the Social Security Act (the Act). These regulations were previously located at 42 CFR Part 1003.

On April 24, 1996, the OIG published a final rule at 61 FR 18078 to implement SSA's new CMP authority provided under section 206(b) of the SSIIPIA, which added section 1129 to the Act, effective October 1, 1994. This authority allows for imposition of penalties and assessments against any individual, organization, agency, or other entity that makes, or causes to be made, a false or misleading statement or representation of a material fact for use in determining initial or continuing rights to Old-Age, Survivors, and Disability Insurance or Supplemental Security Income benefit payments, if the person knew, or should have known, that such statement or representation was false or misleading, or omitted a material fact.

In addition, on May 17, 2006, the OIG published a final rule at 71 FR 28579

implementing the changes in the CMP program required by section 251(a) of Public Law 106-169, the Foster Care Independence Act of 1999 (FCIA), enacted December 14, 1999, and by sections 111, 201, 204, and 207 of Public Law 108-203, the Social Security Protection Act of 2004 (SSPA), enacted March 2, 2004. Section 251(a) of FCIA expanded the authority under section 1129 to impose a civil monetary penalty and assessment for fraud involved in the receipt of benefits by certain World War II veterans. Sections 111, 201, 204, and 207 of SSPA broadened the scope under section 1129 by adding new categories of penalties against (1) representative payees with respect to wrongful conversions, and (2) individuals who withhold the disclosure of material facts to the SSA.

I. The Debt Collection Improvement Act of 1996

In an effort to maintain the remedial impact of civil money penalties (CMPs) and promote compliance with the law, the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410) was amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) to require Federal agencies to regularly adjust certain CMPs for inflation. As amended, the law requires each agency to make an initial inflationary adjustment for all applicable CMPs, and to make further adjustments at least once every four years thereafter for these penalty amounts. The Debt Collection Improvement Act of 1996 further stipulates that any resulting increases in a CMP due to the calculated inflation adjustments (i) should apply only to the violations that occur after October 23, 1996—the Act’s effective date—and (ii) should not exceed 10 percent of the penalty indicated. In addition to those penalties that fall under the Internal Revenue Code of

1986, the Tariff Act of 1930 and the Occupational Safety and Health Act of 1970, CMPs that come under the Social Security Act were specifically exempted from the requirements of the Debt Collection Improvement Act of 1996.

II. Bipartisan Budget Act of 2015, Section 701: Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

The Bipartisan Budget Act of 2015, Section 701: Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114-74) (the 2015 Adjustment Act) amends the Federal Civil Penalties Inflation Adjustment Act of 1990 to require Federal agencies that impose CMPs subject to inflation adjustments to adjust the penalties for inflation annually instead of at least once every four years. The 2015 Act expanded the categories of penalties that require adjustment for inflation to include CMPs under the Occupational Safety and Health Act of 1970 and the Social Security Act. The 2015 Adjustment Act further requires affected agencies to adjust the level of CMPs with an initial “catch-up” adjustment through the publication of this interim final rule no later than July 1, 2016, to be effective no later than August 1, 2016. We will identify, for each penalty, the year and corresponding amount(s) for which the maximum penalty level or range of minimum and maximum penalties was established or last adjusted in statute or regulation.

III. Initial catch-up adjustment and calculation for annual inflation adjustments

Based on guidance issued by the Office of Management and Budget (OMB),¹ we will modify the penalty level or range that we identify as needing an initial catch-up based on the percent change between the non-seasonally adjusted Consumer Price Index for All Urban Consumers (CPI-U) for the month of October in the year in which the penalty was established or previously adjusted and the October 2015 CPI-U.² We also will use OMB-published multipliers to make these adjustments.³ This initial catch-up adjustment may not exceed 150 percent of the amount of that penalty on the date of enactment of the 2015 Adjustment Act.⁴ The annual inflation adjustment in subsequent years must be a cost-of-living adjustment based on any increases in the October CPI-U (not seasonally adjusted) each year.⁵ Inflation adjustment increases must be rounded to the nearest multiple of \$1.⁶

IV. Social Security Administration's New Penalty Levels Under the Initial Catch-Up Adjustment

¹ On February 24, 2016, OMB published its memorandum "Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015" (OMB Memorandum M-16-06). The memorandum can be found at <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>. The memorandum provides guidance to implement the civil monetary penalty adjustment requirements of Section 701 of Public Law 114-74.

² *Id.* at 3.

³ *Id.* at 6.

⁴ *Id.* at 3 and 8.

⁵ *Id.* at 1.

⁶ *Id.* at 3.

The Social Security Act currently includes three different CMP levels, one under Section 1129, 42 U.S.C. 1320a-8, and two under Section 1140, 42 U.S.C. 1320b-10. The Section 1129 CMP was established in Section 206(b) of the Social Security Independence and Program Improvements Act of 1994, Pub. L. 103-296, 108 Stat. 1509. The Section 1140 CMPs were established in Sec. 428(a) of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100-360, 102 Stat. 815.

Our current maximum CMP is \$5,000.00 for each violation under Section 1129 of the Social Security Act, \$25,000.00 per broadcast or telecast under Section 1140 of the Social Security Act, and \$5,000.00 for all other violations under Section 1140 of the Social Security Act. In OMB Memorandum, M-16-06, OMB instructed affected agencies to add an initial inflationary adjustment amount (a “catch-up” amount) to relevant CMPs based on the percent change between the CPI-U for the month of October in the year of the previous adjustment and the October 2015 CPI-U. Based on OMB’s guidance, our adjustments to the existing maximum CMPs result in the following new maximum penalties, which will be effective as of August 1, 2016. The information below serves as public notice of the new maximum penalty amounts for 2016; we will not be publishing a separate Federal Register Notice for this change. For any future adjustments, we will publish a notice in the Federal Register to announce the new amounts.

Section 1129 CMPs:

$\$5,000.00$ (current maximum) \times 1.59089 (OMB-issued initial adjustment multiplier) =
 $\$7954.00$ (new maximum CMP amount-rounded to the nearest dollar).

Section 1140 CMPs:

\$25,000.00 (current maximum per broadcast or telecast) x 1.97869 (OMB-issued initial adjustment multiplier) = \$49,467.00 (new maximum CMP amount-rounded to the nearest dollar).

\$5,000.00 (current maximum for all other violations) x 1.97869 (OMB-issued initial adjustment multiplier) = \$9,893.00 (new maximum CMP amount-rounded to the nearest dollar).

REGULATORY PROCEDURES

Good Cause for Exception to Rulemaking Procedures

Pursuant to sections 205(a), 702(a)(5), and 1631(d)(1) of the Social Security Act, 42 U.S.C. 405(a), 42 U.S.C. 902(a)(5), and 42 U.S.C. 1383(d)(1), the Social Security Administration follows the Administrative Procedures Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of our regulations.

The APA provides exceptions to its Notice of Proposed Rulemaking (NPRM) procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. In the case of these interim final rules, we have determined that under 5 U.S.C. 553(b)(B), good cause exists for

waiving the NPRM procedures because doing so would have been impractical given the Congressional mandates.

Public Law 114-74 was signed into law on November 2, 2015. Section 701(b)(1)(D) requires that the Commissioner issue regulations to adjust CMPs through an interim final rulemaking, and requires the initial catch up adjustment to take effect no later than August 1, 2016. Accordingly, to issue these rules as a NPRM would have delayed issuance of final rules well past the required August 1, 2016 effective date. In light of the Congressional mandate that we issue regulations to adjust CMPs through an interim final rulemaking, and that the initial catch up adjustment take effect no later than August 1, 2016, we believe good cause exists for waiver of the NPRM procedures under the APA.

Executive Order 12866 as supplemented by Executive Order 13563

We consulted with OMB and determined that this interim final rule does not meet the criteria for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB did not review the interim final rule.

Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis consistent with Pub. L. 96-354, the Regulatory Flexibility Act, unless the Inspector General certifies that a regulation will not have a significant economic impact on a substantial number of small business entities. While the

increase in the civil monetary penalties provided for under sections 1129 and 1140 of the Social Security Act might have a slight impact on small entities, it is the nature of the violation and not the size of the entity that will result in an action by the OIG. In either case, we do not anticipate that a substantial number of small entities will be significantly affected by this revised rulemaking. These final rules reflect legislative amendments affecting previously existing sections of the Social Security Act, and do not substantially alter the effect of these sanctions on small business entities. Therefore, we have concluded, and the Inspector General certifies, that a regulatory flexibility analysis is not required for this interim final rule.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security – Disability Insurance; 96.002, Social Security – Retirement Insurance; 96.004, Social Security – Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 498

Administrative practice and procedure, Fraud.

Gale Stallworth Stone,
Deputy Inspector General of Social Security.

For the reasons set forth in the preamble, we amend 20 CFR Part 498 as set forth below:

PART 498—CIVIL MONETARY PENALTIES, ASSESSMENTS AND RECOMMENDED EXCLUSIONS

1. The authority citation for part 498 continues to read as follows:

AUTHORITY: Secs. 702(a)(5), 1129, and 1140 of the Social Security Act (42 U.S.C. 902(a)(5), 1320a-8, and 1320b-10).

2. Amend § 498.103 by adding and reserving paragraph (f), and adding paragraph (g), to read as follows:

§ 498.103 Amount of penalty.

* * * * *

(f) [Reserved]

(g) (1) The amount of the penalties described in paragraphs (a) through (d) of this section are the maximum penalties which may be assessed under these paragraphs for violations made after June 16, 2006, but before August 1, 2016.

(2) (i) After August 1, 2016 penalties are adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), as further amended by the Bipartisan Budget Act of 2015, Section 701: Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114-74).

(ii) The maximum penalties which may be assessed under this section is the larger of:

(A) The amount for the previous calendar year; or

(B) An amount adjusted for inflation, calculated by multiplying the amount for the previous calendar year by the percentage by which the Consumer Price Index for all urban consumers for the month of October preceding the current calendar year exceeds the Consumer Price Index for all urban consumers for the month of October of the calendar year two years prior to the current calendar year, adding that amount to the amount for the previous calendar year, and rounding the total to the nearest dollar.

(iii) Notice of the maximum penalty which may be assessed under this section for calendar years after 2016 will be published in the **Federal Register** on an annual basis on or before January 15 of each calendar year.

[FR Doc. 2016-13241 Filed: 6/24/2016 8:45 am; Publication Date: 6/27/2016]